S.B.CIVIL WRIT PETITION NO.1189/2005.

(BLOCK DEVELOPMENT OFFICER AND ANOTHER. V. CHHAGAN LAL AND ANOTHER)

DATE OF ORDER: 11.3.2005

PRESENT.

HON'BLE MR. JUSTICE R.P.VYAS

Ms. Kusum Rao, for Petitioners.

REPORTABLE.

The instant petition is directed against the award dated 21.12.2000 (Annexure 5), passed by the Judge, Labour Court, Bikaner in Industrial Disputes Case No.52/1999.

Brief facts giving rise to the instant petition are that respondent No.1 was appointed on daily wage basis on 27.8.1985 and he worked upto 16.5.1989 without any break. It is submitted that his services were satisfactory and he worked for more than 240 days in a calendar year, therefore, his case falls under the definition of workman and his services cannot be terminated without complying with the provisions of Section 25 of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act, 1947').

It is further submitted that his services were terminated by a verbal order dated 16.5.1989 and he was not served upon any notice prior to the termination of his services. He was also not given any compensation in lieu thereof. No seniority list was prepared and affixed on the Notice Board.

It is also submitted that similarly situated persons, junior to the respondent No.1, were retained in the service, whereas the services of the respondent No.1 were terminated, without any notice served upon him. Due to the termination, he remained unemployed till the date of filing of the claim. Despite the fact that the posts were lying vacant and fresh appointments were made, but he has been denied the appointment. It was stated that the termination order amounts to unfair labour practice and, therefore, it is illegal. The respondent No.1 has claimed reinstatement with all consequential benefits.

The petitioners submitted written statements before the Labour Court mentioning therein that Chhagan Lal - respondent No.1 was appointed purely on temporary basis as a part-time employee for a short term to fill water in the school every morning for one hour only. He worked on honorarium basis and was being paid Rs.180/- per month. It was also stated that due to poor financial position of the Panchayat, the services of Respondent No.1 were brought to cessation vide order dated 16.5.1989. It was stated that respondent No.1 did not work continuously for 240 days in a calendar year. After terminating the services of the respondent No.1, he was again reappointed and, thereafter, his services were again terminated. In this view of the matter, respondent No.1 has not worked continuously for 240 days in one calendar year. Since he was working on honorarium basis, the provisions of the Act of 1947 were not

applicable to him. Not only that, even he instituted a case after a delay of 10 years. Respondent No.1 is a farmer and he was cultivating on paternal land. He owns cattles and is running a dairy, therefore, he did not work for 10 years and did not even furnish any explanation of delay of 10 years. He has also not given any sufficient cause for delay.

The petitioners also raised preliminary objections before the Labour Court and submitted that Chhagan Lal - respondent No.1 was employed on honorarium basis as a part-time employee for a specific work of filling water in the school every morning for one hour for children, therefore, his case does not fall within the definition of workman and the provisions of the Act of 1947 are not applicable to him. It was further submitted that due to financial crisis, the honorarium could not be paid and his services were brought to cessation. It was also submitted that no post was lying vacant with the petitioners and as such, there was no financial arrangement by the Panchayat to accommodate such person. Not only that, even respondent No.1 did not choose to move any representation to the higher authority to this effect. In this view of the matter, the Labour Court has no jurisdiction to entertain the matter after such a long period of ten years, as respondent No.1 does not fall under the definition of workman. It was pointed out that respondent No.1 preferred a writ petition before the High Court, which was was disposed of, on the ground of alternative remedy.

The Labour Court, with all objective considerations and subjective satisfaction and after hearing both the parties and scanning and scrutinizing the documents available on record, adjudicated the reference, and, thereafter, passed the award dated 21.12.2000 (Annex.5), whereby the Labour Court awarded reinstatement with back wages and compensation of Rs.7500/- to the the workman – Chhagan Lal (Respondent No.1).

Being aggrieved by the award dated 21.12.2000 (Annex.5), passed by the Labour Court, Bikaner, the petitioners have preferred the instant petition.

Heard learned counsel for the petitioner and scanned and scrutinized the material available on record.

The Labour Court, after making a fact finding enquiry and after taking into consideration all the facts and circumstances of the case, has rightly held that Chhagan Lal - respondent No.1 was a workman as he has worked for 7-8 hours regularly in the School. The Labour Court also held that no seniority list was published by the employer, nor one month's notice or salary in lieu of notice or retrenchment compensation was given to the workman . Apart from that, no first-cum-last go principle was followed. The services of the workman were terminated on the false pretext of financial crisis, as after the termination of the services of the respondent No.1 - Chhagan Lal, one Satlal has performed the duties of Class IV servant with the employer.

Therefore, the Labour Court rightly held that on 16.5.89, services of respondent No.1 were illegally terminated by the employer, without complying with the provisions of Section 25-F, G & H of the Act, 1947. The Labour Court also held that since respondent No.1 – the workman has not performed work from 16.5.89 to 21.12.2000 – the date of passing the award, he is not entitled to get the pay and allowances for the aforesaid period, but, looking to the troubles and humiliation suffered by the workman, as well as the fact that his services were terminated by the employer on the false pretext of financial crisis, which resulted into his filing the writ petition before this Court, he was suitably awarded Rs.7,500/- as a compensation and was ordered to be reinstated from 21.12.2000 – the date of passing the aforesaid award.

The scope of judicial review and interference by this Court under Articles 226 and 227 of the Constitution of India is very limited. This Court cannot sit as a court of appeal by virtue of the findings arrived at by the learned Labour Court, while making the inquiry with respect to the issue, under reference, made by the appropriate Government for adjudicating the grievance of the party-concerned.

The findings arrived at by the learned Labour Court are based on sound reasonings, which call for no interference by this Court under Article 226/227 of the Constitution of India.

In view of the discussions made above, I do not find any

merit in the instant petition. The same is, therefore, dismissed. There will be no order as to costs.

(R.P.VYAS),J.

Scd.